

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEONARD A. HASKINS, No. C 08-02226 CW (PR)
Petitioner, ORDER OF DISMISSAL WITH LEAVE
v. TO AMEND
ROBERT AYERS, JR.,
Respondent.

This case was commenced when Petitioner, a prisoner at San Quentin State Prison, filed a document captioned "Petition For A Writ of Habeas Corpus." Petitioner alleges that he has been subjected to "neglectful medical conditions . . . with deliberate indifference to [his] U.S. Constitution Eighth Amendment rights to be free from cruel and unusual punishment." (Pet. at 8.) Petitioner has also filed an application to proceed in forma pauperis (IFP).

The petition does not challenge either the fact of Petitioner's conviction or the length of his sentence. Rather, it goes entirely to the conditions of his confinement. A federal civil rights claim under 42 U.S.C. § 1983, rather than a federal habeas petition, is the proper way to raise such claims. See Badeau v. Cox, 931 F.2d 573, 574 (9th Cir. 1991) (civil rights action proper method of challenging conditions of confinement); Crawford v. Bell, 599 F.2d 890, 891-92 & n.1 (9th Cir. 1979) (affirming dismissal of habeas petition because challenges to terms and conditions of confinement must be brought as civil rights complaint).

While a district court may construe a habeas petition by a prisoner attacking the conditions of his confinement as pleading

1 civil rights claims under 42 U.S.C. § 1983, see Wilwording v.
2 Swenson, 404 U.S. 249, 251 (1971), it is not appropriate to do so
3 in this case. To state a claim under § 1983, a plaintiff must
4 allege two essential elements: (1) that a right secured by the
5 Constitution or laws of the United States was violated, and
6 (2) that the alleged violation was committed by a person acting
7 under the color of state law. See West v. Atkins, 487 U.S. 42, 48
8 (1988). The habeas petition does not include the information
9 necessary to state a civil rights violation. It does not link the
10 named respondent to the claim, does not state who Petitioner
11 alleges actually committed the violation complained of, and does
12 not include a prayer for relief, such as damages or injunctive
13 relief or both. It was not accompanied by the correct filing fee
14 for a civil rights case. Accordingly, the Court directs Petitioner
15 to file a civil rights complaint on the attached civil rights
16 complaint form, stating his claims for relief, if he wishes to go
17 forward with this action as a civil rights action.

18 Before filing his complaint, Petitioner must ensure that he
19 has exhausted all of his administrative remedies. The Prison
20 Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C. § 1997e to
21 provide that "[n]o action shall be brought with respect to prison
22 conditions under [42 U.S.C. § 1983], or any other Federal law, by a
23 prisoner confined in any jail, prison, or other correctional
24 facility until such administrative remedies as are available are
25 exhausted." 42 U.S.C. § 1997e(a).

26 The State of California provides its prisoners the right to
27 appeal administratively "any departmental decision, action,
28 condition or policy perceived by those individuals as adversely

1 affecting their welfare." Cal. Code Regs. tit. 15, § 3084.1(a).
2 It also provides them the right to file appeals alleging misconduct
3 by correctional officers and officials. Id. 3084.1(e). In order
4 to exhaust available administrative remedies within this system, a
5 prisoner must proceed through several levels of appeal:
6 (1) informal resolution; (2) formal written appeal on a CDC 602
7 inmate appeal form; (3) second level appeal to the institution head
8 or designee; and (4) third level appeal to the Director of the
9 California Department of Corrections and Rehabilitation. Barry v.
10 Ratelle, 985 F. Supp. 1235, 1237 (S.D. Cal. 1997) (citing Cal. Code
11 Regs. tit. 15, § 3084.5). A final decision from the Director's
12 level of review satisfies the exhaustion requirement under
13 § 1997e(a). Id. at 1237-38.

14 Further, Petitioner must name as defendants each person who
15 caused a violation of his constitutional rights and explain what
16 each person did to cause the violation. Liability under § 1983
17 arises only upon a showing of personal participation by the
18 defendant. See Taylor v. List, 880 F.2d 1040, 1045 (9th Cir.
19 1989). There is no respondeat superior liability under § 1983,
20 i.e. no liability under the theory that a supervisor is responsible
21 for the actions or omissions of his or her subordinate. See Leer
22 v. Murphy, 844 F.2d 628, 634 (9th Cir. 1988) (liability may be
23 imposed on individual defendant under § 1983 only if plaintiff can
24 show that defendant proximately caused deprivation of federally
25 protected right).

26 Because Petitioner originally filed this case as a habeas
27 corpus action, his pending motion for leave to proceed IFP (docket
28 no. 5) is GRANTED as to the \$5.00 filing fee. If Petitioner

1 chooses to pursue this case as a § 1983 civil rights action, he
2 must pay the correct filing fee for a civil rights action, which is
3 \$350.00. If Petitioner is unable to pay the full filing fee, he
4 must submit another IFP application, including: (1) an affidavit
5 with a statement of all assets he possesses, and (2) a certified
6 copy of his trust fund account statement for the six-month period
7 immediately preceding the filing of the action, obtained from the
8 appropriate official of each prison at which the prisoner is or was
9 confined. See 28 U.S.C. § 1915(a)(1), (2). If the Court
10 determines that the prisoner is unable to pay the full filing fee
11 at the time of filing, the prisoner will be granted leave to
12 proceed IFP on his civil right action. This means that the filing
13 fee must be paid by way of an installment plan, according to which
14 the Court first will assess and collect a partial filing fee from
15 the prisoner, and then the prisoner will be required to make
16 monthly payments of twenty percent of the preceding month's income
17 credited to the prisoner's account until the full \$350.00 filing
18 fee is paid. Id. § 1915(b)(1). The agency having custody of the
19 prisoner is responsible for forwarding to the Court payments from
20 the prisoner's account each time the amount in the account exceeds
21 ten dollars. See id.

22 CONCLUSION

23 For the foregoing reasons,

24 1. Petitioner's pending motion for leave to proceed IFP
25 (docket no. 5) is GRANTED as to the \$5.00 filing fee for habeas
corpus actions.

27 2. Petitioner's case is DISMISSED with leave to amend.

28 Petitioner must file his complaint no later than thirty (30) days

1 from the date of this Order. Petitioner must write the case number
2 for this action -- Case No. C 08-02226 CW (PR) -- on the form and
3 complete all sections of the form. Also, Petitioner must pay the
4 requisite \$350.00 filing fee in this action no later than thirty
5 (30) days from the date of this Order. He shall include with his
6 payment a clear indication that it is for the above-referenced case
7 number, Case No. C 08-02226 CW (PR). In the event that Petitioner
8 is unable to pay the filing fee, he shall submit another IFP
9 application, trust account statement and certificate of funds no
10 later than thirty (30) days from the date of this Order.

11 Failure to file a completed civil rights form and to pay the
12 \$350.00 filing fee or file the requisite documents within the
13 thirty-day deadline shall result in dismissal of this action
14 without prejudice.

15 3. The Clerk of the Court shall send Petitioner a blank
16 civil rights form and the Court's prisoner IFP application form
17 along with his copy of this Order.

18 4. This Order terminates Docket no. 5.

19 IT IS SO ORDERED.

20 Dated: 7/8/08


CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

LEONARD A HASKINS,

Plaintiff,

Case Number: CV08-02226 CW

V.

ROBERT AYERS JR et al,

Defendant.

CERTIFICATE OF SERVICE

7 ROBERT AYERS JR et al,
8 Defendant.
9 _____
I, the undersigned, hereby certify that

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

11 That on July 8, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
12 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
in the Clerk's office.

15 Leonard A. Haskins B96040 w/CR form
San Quentin State Prison
16 San Quentin, CA 94964

17 | Dated: July 8, 2008

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk